

§ 1240.62 Jurisdiction.

(a) *Office of International Affairs.* Except as provided in paragraph (b) of this section, the Office of International Affairs shall have initial jurisdiction to grant or refer to the Immigration Court or Board an application for suspension of deportation or special rule cancellation of removal filed by an alien described in § 1240.61, provided:

(1) In the case of a national of El Salvador described in § 1240.61(a)(1), the alien filed a complete asylum application on or before January 31, 1996 (with an administrative grace period extending to February 16, 1996), or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the application is still pending adjudication by the Service;

(2) In the case of a national of Guatemala described in § 1240.61(a)(1), the alien filed a complete asylum application on or before January 3, 1995, or otherwise met the asylum application filing deadline pursuant to the *ABC* settlement agreement, and the application is still pending adjudication by the Service;

(3) In the case of an individual described in § 1240.61(a)(2) or (3), the individual's asylum application is pending adjudication by the Service;

(4) In the case of an individual described in § 1240.61(a)(4) or (5), the individual's parent or spouse has an application pending with the Service under this subpart H or has been granted relief by the Service under this subpart.

(b) *Immigration Court.* The Immigration Court shall have exclusive jurisdiction over an application for suspension of deportation or special rule cancellation of removal filed pursuant to section 309(f)(1)(A) or (B) of IIRIRA, as amended by NACARA, by an alien who has been served Form I-221, Order to Show Cause, or Form I-862, Notice to Appear, after a copy of the charging document has been filed with the Immigration Court, unless the alien is covered by one of the following exceptions:

(1) *Certain ABC class members.* (i) The alien is a registered *ABC* class member for whom proceedings before the Immigration Court or the Board have been administratively closed or continued (including those aliens who had final

orders of deportation or removal who have filed and been granted a motion to reopen as required under 8 CFR 1003.43);

(ii) The alien is eligible for benefits of the *ABC* settlement agreement and has not had a *de novo* asylum adjudication pursuant to the settlement agreement; and

(iii) The alien has not moved for and been granted a motion to recalendar proceedings before the Immigration Court or the Board to request suspension of deportation.

(2) *Spouses, children, unmarried sons, and unmarried daughters.* (i) The alien is described in § 1240.61(a) (4) or (5);

(ii) The alien's spouse or parent is described in § 1240.61(a)(1), (a)(2), or (a)(3) and has a Form I-881 pending with the Service; and

(iii) The alien's proceedings before the Immigration Court have been administratively closed, or the alien's proceedings before the Board have been continued, to permit the alien to file an application for suspension of deportation or special rule cancellation of removal with the Service.

§ 1240.63 Application process.

(a) *Form and fees.* Except as provided in paragraph (b) of this section, the application must be made on a Form I-881, Application for Suspension of Deportation or Special Rule Cancellation of Removal (pursuant to section 203 of Public Law 105-100 (NACARA)), and filed in accordance with the instructions for that form. An applicant who submitted to EOIR a completed Form EOIR-40, Application for Suspension of Deportation, before the effective date of the Form I-881 may apply with the Service by submitting the completed Form EOIR-40 attached to a completed first page of the Form I-881. Each application must be filed with the filing and fingerprint fees as provided in § 1103.7(b)(1) of this chapter, or a request for fee waiver, as provided in § 1103.7(c) of this chapter. The fact that an applicant has also applied for asylum does not exempt the applicant from the fingerprinting fees associated with the Form I-881.

(b) *Applications filed with EOIR.* If jurisdiction rests with the Immigration Court under § 260.62(b), the application